As a general rule a trespasser upon a track, who fails to make use of his senses to keep himself informed of the approach of trains will be held guilty of contributory negligence, and cannot recover for an injury, notwithstanding concurrent negligence on the part of the railroad company. 1. *Thompson on Negligence* 449; *Elwood* v. *N. Y. C. & H. R. R. Co.* 4 Hun, 808.

A number of American states follow the English rule, (3 & 4 Vict. c. 97, § 16) and hold that railroad companies are under no obligations to take precautions against trespassers: *Mulherrin* v. *D. L. & W. R. R. Co.*, 81 Pa. St. 366, and one who steps upon a railroad track, does so at his peril. *L. S. & M. S. R. R. Co.* v. *Hart*, 20 Ill. 478.

NEGLIGENCE—PROXIMATE CAUSE.—Plaintiff, aged 69, was talking to a friend, who held his arm, when defendant, weighing 235 pounds, in passing greeted this friend by seizing his arm and drawing him aside so that the plaintiff fell and was injured, Defendant's act was friendly, and was a customary greeting. Defendant did not notice plaintiff, or know that he fell. In an action for damages for wilful assault, *Held*, that defendant's act was the proximate cause of the injury, and constituted wilful assault, for which recovery may be had. *Reynolds* v. *Pierson* (1902), — Ind. —, 64 N. E. Rep. 484.

The court said that since the defendant might have passed without interfering with the person of any one, his failure to do so implied his willingness to cause the injury inflicted, thus using the language employed in *Mercer* v. *Corbin*, 117 Ind. 450, 3 L. R. A. 221, upon which it mainly relies. Negligence seems to be presumed rather than based upon proof. That the cause was in its nature accidental is lost sight of. While the defendant was exercising a legal right his intent is not considered. That it should be is held by 1 HILLIARD ON TORTS, 190; *Paxton* v. *Boyer*, 67 Ill. 132; *Hoffman* v. *Eppers*, 41 Wis. 258-9. That the defendant's act was the proximate cause of the injury is not in accord with the great weight of authority upon this matter; as, *Milwaukee R. R. Co.* v. *Kellogg*, 94 U. S. 469; *Penna. R. R. Co.* v. *Hope*, 80 Pa. St. 373, 21 Am. Rep. 100; COOLEY ON TORTS, 91, 752, 801. This decision goes further than any previous case of like nature, and is not sustained by authority. See POLLOCK ON TORTS, 36, 37; SHEAR. & RED. ON NEG. 10; *Bullock* v. *Babcock*, 3 Wendell 391; *Johnson* v. *McConnell*, 15 Hun, 293; *Ricker* v. *Freeman*, 50 N. H. 420; *Wright* v. *Clark*, 50 Vt. 130; 1 Bingham 213; *Brown* v. *Kendall*, 6 Cush. 292; *Morris* v. *Platt*, 32 Conn. 75; *Harvey* v. *Dunlop*, Hill & D. Supp. N. Y. 193; *Bizzell* v. *Booker*, 16 Ark. 308; AMER. & ENG. ENCYC. LAW, I, 272, XVI., 406; 1 ADDISON ON TORTS, 510.

PLEADING—SUFFICIENCY OF DECLARATION—FRAUD.—A had a worthless lease. He transferred it to his brother-in-law, who, in accordance with A's plans, made a deed to one B, expressing a consideration of $100,000. A then paid B to execute a trust deed on the property for $75,000 to C, a trust company, securing notes of B to that amount, the former placing the notes on the market. The plaintiff, relying on the recital of consideration in the trust deed and the statements in the notes, bought certain of the paper. Finding B not responsible she brings an action of deceit against A. *Held*, that a declaration containing the above facts states a good cause of action. *Leonard* v, *Springer* (1902), — Ill., —, 64 N. E. Rep. 299.

The law as to what constitutes fraud is clear; difficulties arise only when the rule is applied to particular facts. False representations made to the public are actionable when the plaintiff has been injnred by relying on them. *Morse* v. *Swits*, 19 How. Prac. (N. Y.) 275; *Bartholomew* v. *Bentley*, 15

Ohio, 660. Although representations as to value are held not to be ground for an action of deceit, *Doran* v. *Eaton*, 40 Minn. 35; it cannot be laid down as a rule of law that value is never a material fact. *Picard* v. *McCormick*, 11 Mich. 68. When representations of value are made as facts, they are binding as such, and not as mere expressions of opinion. *Murray* v. *Tolman*, 162 Ill. 417.

PUBLIC OFFICERS—COUNTY TREASURER—FEES—ESTOPPEL.—A county treasurer drew his salary as provided by act of 1891, which prohibited him from receiving any other compensation. Four days before his term of office expired, the act of 1891 was declared unconstitutional, and the treasurer filed his claim to additional fees, as provided by act of 1879, which claim was paid. An action was brought by the county to recover the money. *Held*, that having accepted and retained his salary as provided by an act of the legislature, he was estopped from questioning the validity of such act, and hence the county was entitled to recover the additional fees paid him. *Gross* v. *Board of Commissioners* (1902), — Ind. —, 64 N. E. Rep. 25.

The case presented is one in which an officer who holds office under a law which is declared unconstitutional, and is later held to be valid, seeks to recover fees under a former law during the time the first decision stands. It is unusual in that the officer has gained possession of the compensation given by both acts, and the State is the party seeking recovery. The decision of the court is based on the doctrine that "One who receives interest or consideration from an act of the legislature, should not be allowed to retain his advantage or keep his consideration, and then repudiate the act as unconstitutional." *Ferguson* v. *Landram*, 5 Bush, 230, 96 Am. Dec. 350.

PUBLIC OFFICERS — REMOVAL—POWER OF GOVERNOR.—Petitioner was elected sheriff, duly qualified and took office. Subsequently, charges alleging misconduct prior to his election, were presented, and the Governor, after a hearing, ordered his removal. Petitioner claims his removal was in violation of the provisions of the State constitution. The State constitution provides that the Governor may remove any officer (within a certain class) by giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense. *Held*, that the power vested in the Governor to remove certain designated officers is executive, and not judicial, and the exercise of such power is not reviewable by the courts. *In re Guden, Sheriff*, (1902), — N. Y. —, 64 N. E. Rep. 451.

Chief Justice Parker, who wrote the decision, and with whom concurred a majority of the court, reviews the history of the adoption of the constitution of the State of New York. His decision is based on the evident intention of the framers of the constitution to vest in the Governor an absolute power of removal. Judge O'Brien concurred in the result reached, but by the following reasoning: That the court could inquire with reference to a single question, that of jurisdiction; that the power to inquire as to jurisdiction implies the right to examine into the nature of the charge, in order to see whether it is in any proper sense a charge within the meaning of the Constitution. Judge O'Brien finds that the charges were sufficient to confer jurisdiction. Although the reasoning of Chief Justice Parker may be accounted for by the peculiarities of the State constitution, it seems that the view taken by Judge O'Brien is more in the line of reason and more generally followed. *Fuller* v. *Attorney General*, 98 Mich. 101,

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